

IN THE  
**Supreme Court of the United States**

October Term, 1976

No. 76-663

CHRYSLER MOTORS CORPORATION

and

CHRYSLER CREDIT CORPORATION,

*Petitioners,*

*v.*

MARVIN H. GREENFIELD

and

SUPERIOR DODGE, INC.,

*Respondents.*

On Petition for Writ of Certiorari to the United States  
Court of Appeals for the Fourth Circuit

**PETITIONERS' REPLY BRIEF**

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December 30, 1976

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**I**

**The Issue With Respect to the Alleged Revival of Respondent Superior's Charter Is Not What Maryland Law Is, But Rather Whether Federal Procedure Was Violated and Petitioners' Right to a Fair Trial Impinged.**

Respondents' argument in their Brief in Opposition about the effect of the revival of a corporation's charter under Maryland law (although incorrect) is not the federal

question raised on this Petition. Rather, the question is whether the alleged fact of the post-verdict revival of respondent Superior's charter was considered by the courts below, and the law of Maryland applied thereto, in violation of federal procedure and constitutional safeguards.

Petitioners submit that the consideration of post-trial facts on motions for judgment n.o.v., regardless of the otherwise applicable law, violates Rule 50(b) of the Federal Rules of Civil Procedure and impinges on the fairness of trial. At most, post-trial facts might provide grounds for a new trial, where Maryland law, if applicable, could be applied in accordance with federal procedure.

This is the clear teaching of *Hawkins v. Sims*, 137 F.2d 66 (4th Cir. 1943); *Midcontinent Broadcasting Co. v. North Central Airlines, Inc.*, 471 F.2d 357 (8th Cir. 1973); and *O'Neill v. Kiledjian*, 511 F.2d 511 (6th Cir. 1975). Respondents' attempt to cope with these cases is to argue, in effect, that they established federal law only with regard to the particular facts involved therein. Rules of federal procedure, however, are not made only for a particular case and do not change because the facts are different or because the issue might be "medical negligence" or "alienation of affections" instead of a "corporation's capacity to sue."

## II

### **Review by the Supreme Court of the District Court's Hopelessly Confusing Jury Instructions Is Not Precluded by Rule 51 of the Federal Rules of Civil Procedure, or Otherwise.**

Respondents in their Brief in Opposition do not deal with the merits of petitioners' argument that the jury instructions were so hopelessly confusing and devoid of the barest guidelines to aid the jury so as to deprive petitioners of a fair trial and to call for an exercise of the Supreme Court's power of supervision, except to state the obvious fact that the District Court thought its instructions were adequate and the Court of Appeals affirmed. Instead, respondents argue that petitioners failed to make adequate objections to the instructions below so that this Court is precluded from considering petitioners' argument under Rule 51 of the Federal Rules of Civil Procedure.

First, respondents are incorrect that petitioners failed adequately to object to the jury instructions in accordance with Rule 51 of the Federal Rules of Civil Procedure.

With respect to the District Court's combination in the jury charge and verdict form of causes of action and issues, precluding consideration of statute of limitations and other defenses, petitioner Motors objected, for example, to the verdict form, as follows:

"Your Honor, I was wondering if [the verdict form as it pertains to] the Automobile Dealers Day in Court Act could ask if they find for the Plaintiff, whether they find on the ground of \* \* \* wrongful termination, or

failure to exercise the requirements under the carrying out of the franchise; otherwise, it seems to me if there is a verdict against the Defendant \* \* \*, we come back to our statute of limitations which might be varied. We would not know which of those two possibilities they might find against us, or both." [R. 2771].

The District Court's reply, however, indicated it had considered how explicit it would require the jury's findings to be and had decided that it would require only general findings as to liability:

"No, I agree nobody wants to try it over, and I have tried—that is the reason I tried to put on these additional things. The danger is by putting on too many, the jury may become hopelessly confused on it, so I think I would let it go \* \* \* and I think the charge will clear that up." [R. 2771-72].

After the jury charge, petitioner Motors again objected to the jumbling of causes of action under the Dealers' Day in Court Act [R. 2808-09].

Manifestly, in view of the District Court's explicit denial of all objections to its clear failure to separate in its jury instructions and on the verdict form two distinct causes of action under the Dealers' Day in Court Act, and its expressed reasons therefor, it would have been futile for petitioners to make any further objection that different theories, statutory provisions, the effect of the statute of limitations, etc., made necessary findings more specific than a single general finding on the other causes of action chosen by respondents. Since the District Court, with full understanding of petitioner Motors' position and over its objection, refused to require the jury to specify under which

of the two Dealers' Day in Court Act causes of action it found liability, it clearly would not require the jury to consider separately and specify which of the complained-of acts of petitioners it found to be misrepresentations, tortious inferences with contractual relations or breaches of contract.

The purpose of Rule 51 of the Federal Rules of Civil Procedure of giving the trial court an opportunity to correct its charge was therefore not thwarted by petitioners' failure to object further. *Meitz v. Garrison*, 413 F.2d 895, 899 (8th Cir. 1969); *Cohen v. Franchard Corporation*, 478 F.2d 115, 122 (2d Cir.), cert. denied, 414 U.S. 857 (1973). The District Court was fully aware that petitioners desired greater separation of issues to preserve its defenses, and expressly stated it had decided to go no further [R. 2771-72]. In such a situation, Rule 51 of the Federal Rules of Civil Procedure is satisfied. *Gradsky v. Sperry Rand Corporation*, 489 F.2d 502, 503 (6th Cir. 1973). Cf. *Harlem Taxicab Ass'n v. Nemesh*, 191 F.2d 459, 461 (D.C. Cir. 1951).

Moreover, with respect to damages, petitioners objected to the failure to give instructions requested by them which would have obviated the prejudice caused by the jumbling of issues in the District Court's charge. Petitioner Motors objected to the lack of instructions that the only profits recoverable were the profits of the corporation, respondent Superior [R. 2809-10], and objected to the lack of specificity in the charge about the limitation of the profit-period to less than respondent Greenfield's work expectancy [R. 2809]. Thus, petitioner Motors objected to the jury in-



structions which permitted, and even required, respondent Greenfield to recover when only respondent Superior had a possible basis for recovery.

Petitioner Credit objected to the failure to give proper instructions concerning the measure of damages for the claims alleged against it (*i.e.*, misrepresentation and breach of contract), including foreseeability [R. 2813]. Instead, the District Court instructed the jury that the measure of damages was the same for all causes of action—the lost profits of the dealership [R. 2791]. Petitioner Credit also objected to the failure to give instructions that the damages were limited to those occurring within the period of the statute of limitations [R. 2814] and that respondent Greenfield could not recover merely as the sole shareholder of respondent Superior [*Id.*]. Thus, petitioner Credit also objected to the failure of the District Court's instructions to distinguish between Superior and Greenfield.

Petitioners made clear objections concerning the other errors in the jury instructions raised in the Petition. Petitioner Motors objected to the failure of the District Court to give proper instructions as to the meaning of "good faith" under the Dealers' Day in Court Act [R. 2810], and petitioner Credit objected to the failure of the instructions to explain the proper use of parole evidence when there is a written agreement [R. 2812] and to explain the differences between "preliminary, indefinite or uncertain statements" made during negotiations and a contract [*Id.*].

Thus, all the issues raised in the Petition were preserved by petitioners' proper objections to the jury instructions.

As Professor Moore states, Rule 51 of the Federal Rules of Civil procedure:

"does not require formality, and it is not important in what form an objection is made or even that a formal objection is made at all, as long as it is clear that the trial judge understood the party's position; the purpose of the Rule is to inform the trial judge of possible errors so that he may have an opportunity to correct them." [Footnote omitted.] 5A Moore's Federal Practice ¶51.04 at p. 2521 (2nd Ed. 1975).

Moreover, contrary to respondents' contention, the issues raised in this Petition were raised by petitioners in the Court of Appeals.

Even if petitioners had failed to fully object to the jury instructions below, respondents are incorrect that review by this Court would be precluded by Rule 51 of the Federal Rules of Civil Procedure. Appellate review is not precluded when, as here, there is such fundamental error in the jury instructions as to deprive petitioners of a fair trial. *Ramsey v. Travelers Insurance Company*, 317 F.2d 300, 302 (4th Cir. 1963); *Frederic P. Wiedersum Associates v. National Homes Construction Corp.*, 540 F.2d 62, 66 (2nd Cir. 1976); *McNello v. John B. Kelly, Inc.*, 283 F.2d 96, 102 (3d Cir. 1960); *Delancy v. Motichek Towing Service, Inc.*, 427 F.2d 897, 901 (5th Cir. 1970). As the Second Circuit held in *Frederic P. Wiedersum Associates v. National Homes Construction Corp.*, *supra*, 540 F.2d at 66:

"This court has recognized that consideration of alleged errors in a jury charge may be appropriate even absent objection where 'necessary to correct a fundamental error or to prevent a miscarriage of justice'. *Cohen v. Franchard Corporation*, 478 F.2d 115, 124 (2

Cir. 1973) [, *cert. denied*, 414 U.S. 857 (1973)]. Certainly, it is 'fundamental' error to give instructions which are hopelessly confusing and which fail 'to provide even the barest legal guideposts to aid the jury in rationally reaching a decision'. *McNello v. John B. Kelly, Inc.*, 283 F.2d 96, 102 (2 [*sic.*] Cir. 1960)."

In light of the fundamental error committed by the District Court in this proceeding, the need for an exercise of this Court's power of supervision is indisputable.

Respectfully submitted,

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